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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
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11 SANTA FE EMPLOYES HOSPITAL
12 ASSOCIATION – COAST LINES, a
13 California non-profit corporation,
14 LARRY D. PHILIPPI, an individual,

15 Plaintiffs,

16 vs.

17 CECIL DAVIS, an individual, and
18 DOES 1-10, inclusive,

19 Defendants.
20

Case No.: 2:22-cv-03691-JAK-AFMx

PROTECTIVE ORDER

PROTECTIVE ORDER

21 **1. A. PURPOSES AND LIMITATIONS**

22 Discovery in this action is likely to involve production of confidential,
23 proprietary or private information for which special protection from public
24 disclosure and from use for any purpose other than prosecuting this litigation may
25 be warranted. Accordingly, the parties hereby stipulate to and petition the Court to
26 enter the following Stipulated Protective Order. The parties acknowledge that this
27 Order does not confer blanket protections on all disclosures or responses to
28 discovery and that the protection it affords from public disclosure and use extends

1 only to the limited information or items that are entitled to confidential treatment
2 under the applicable legal principles.

3 **B. GOOD CAUSE STATEMENT**

4 This action may involve personal, medical, and other information for which
5 special protection from public disclosure and from use for any purpose other than
6 prosecution of this action is warranted. Such confidential and proprietary materials
7 and information may consist of, among other things, confidential business or
8 financial information, information regarding confidential business practices, or
9 other confidential research, development, or commercial information (including
10 information implicating privacy rights of third parties), medical records, and
11 information otherwise generally unavailable to the public, or which may be
12 privileged or otherwise protected from disclosure under state or federal statutes,
13 court rules, case decisions, or common law.

14 Accordingly, to expedite the flow of information, to facilitate the prompt
15 resolution of disputes over confidentiality of discovery materials, to adequately
16 protect information the parties are entitled to keep confidential, to ensure that the
17 parties are permitted reasonable necessary uses of such material in preparation for
18 and in the conduct of trial, to address their handling at the end of the litigation, and
19 serve the ends of justice, a protective order for such information is justified in this
20 matter. It is the intent of the parties that information will not be designated as
21 confidential for tactical reasons and that nothing be so designated without a good
22 faith belief that it has been maintained in a confidential, non-public manner, and
23 there is good cause why it should not be part of the public record of this case.

24 **C. ACKNOWLEDGMENT OF PROCEDURE FOR FILING UNDER**
25 **SEAL**

26 The parties further acknowledge, as set forth in Section 12.3, below, that this
27 Stipulated Protective Order does not entitle them to file confidential information
28 under seal; Local Civil Rule 79-5 sets forth the procedures that must be followed

1 and the standards that will be applied when a party seeks permission from the court
2 to file material under seal. There is a strong presumption that the public has a right
3 of access to judicial proceedings and records in civil cases. In connection with non-
4 dispositive motions, good cause must be shown to support a filing under seal. *See*
5 *Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1176 (9th Cir. 2006),
6 *Phillips v. Gen. Motors Corp.*, 307 F.3d 1206, 1210-11 (9th Cir. 2002), *Makar-*
7 *Welbon v. Sony Electronics, Inc.*, 187 F.R.D. 576, 577 (E.D. Wis. 1999) (even
8 stipulated protective orders require good cause showing), and a specific showing of
9 good cause or compelling reasons with proper evidentiary support and legal
10 justification, must be made with respect to Protected Material that a party seeks to
11 file under seal. The parties' mere designation of Disclosure or Discovery Material
12 as CONFIDENTIAL does not -- without the submission of competent evidence by
13 declaration, establishing that the material sought to be filed under seal qualifies as
14 confidential, privileged, or otherwise protectable -- constitute good cause. Further,
15 if a party requests sealing related to a dispositive motion or trial, then compelling
16 reasons, not only good cause, for the sealing must be shown, and the relief sought
17 shall be narrowly tailored to serve the specific interest to be protected. *See Pintos v.*
18 *Pacific Creditors Ass'n.*, 605 F.3d 665, 677-79 (9th Cir. 2010). For each item or
19 type of information, document, or thing sought to be filed or introduced under seal
20 in connection with a dispositive motion or trial, the party seeking protection must
21 articulate compelling reasons, supported by specific facts and legal justification, for
22 the requested sealing order. Again, competent evidence supporting the application
23 to file documents under seal must be provided by declaration. Any document that is
24 not confidential, privileged, or otherwise protectable in its entirety will not be filed
25 under seal if the confidential portions can be redacted. If documents can be
26 redacted, then a redacted version for public viewing, omitting only the confidential,
27 privileged, or otherwise protectable portions of the document, shall be filed. Any
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1 application that seeks to file documents under seal in their entirety should include
2 an explanation of why redaction is not feasible.

3 **2. DEFINITIONS**

4 2.1 Action: this pending federal lawsuit.

5 2.2 Challenging Party: a Party or Non-Party that challenges the designation
6 of information or items under this Order.

7 2.3 “CONFIDENTIAL” Information or Items: information (regardless of
8 how it is generated, stored or maintained) or tangible things that qualify for
9 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
10 the Good Cause Statement.

11 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their
12 support staff).

13 2.5 Designating Party: a Party or Non-Party that designates information or
14 items that it produces in disclosures or in responses to discovery as
15 “CONFIDENTIAL.”

16 2.6 Disclosure or Discovery Material: all items or information, regardless of
17 the medium or manner in which it is generated, stored, or maintained (including,
18 among other things, testimony, transcripts, and tangible things), that are produced
19 or generated in disclosures or responses to discovery in this matter.

20 2.7 Expert: a person with specialized knowledge or experience in a matter
21 pertinent to the litigation who has been retained by a Party or its counsel to serve as
22 an expert witness or as a consultant in this Action.

23 2.8 House Counsel: attorneys who are employees of a party to this Action.
24 House Counsel does not include Outside Counsel of Record or any other outside
25 counsel.

26 2.9 Non-Party: any natural person, partnership, corporation, association or
27 other legal entity not named as a Party to this action.
28

1 2.10 Outside Counsel of Record: attorneys who are not employees of a party
2 to this Action but are retained to represent or advise a party to this Action and have
3 appeared in this Action on behalf of that party or are affiliated with a law firm that
4 has appeared on behalf of that party, and includes support staff.

5 2.11 Party: any party to this Action, including all of its officers, directors,
6 employees, consultants, retained experts, and Outside Counsel of Record (and their
7 support staffs).

8 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
9 Discovery Material in this Action.

10 2.13 Professional Vendors: persons or entities that provide litigation support
11 services (e.g., photocopying, videotaping, translating, preparing exhibits or
12 demonstrations, and organizing, storing, or retrieving data in any form or medium)
13 and their employees and subcontractors.

14 2.14 Protected Material: any Disclosure or Discovery Material that is
15 designated as “CONFIDENTIAL.”

16 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material
17 from a Producing Party.

18 **3. SCOPE**

19 The protections conferred by this Stipulation and Order cover not only
20 Protected Material (as defined above), but also (1) any information copied or
21 extracted from Protected Material; (2) all copies, excerpts, summaries, or
22 compilations of Protected Material; and (3) any testimony, conversations, or
23 presentations by Parties or their Counsel that might reveal Protected Material. Any
24 use of Protected Material at trial shall be governed by the orders of the trial judge.
25 This Order does not govern the use of Protected Material at trial.

26 **4. DURATION**

27 Once a case proceeds to trial, information that was designated as
28 CONFIDENTIAL or maintained pursuant to this protective order used or

1 introduced as an exhibit at trial becomes public and will be presumptively available
2 to all members of the public, including the press, unless compelling reasons
3 supported by specific factual findings to proceed otherwise are made to the trial
4 judge in advance of the trial. *See Kamakana*, 447 F.3d at 1180-81 (distinguishing
5 “good cause” showing for sealing documents produced in discovery from
6 “compelling reasons” standard when merits-related documents are part of court
7 record). Accordingly, the terms of this protective order do not extend beyond the
8 commencement of the trial.

9 **5. DESIGNATING PROTECTED MATERIAL**

10 **5.1 Exercise of Restraint and Care in Designating Material for Protection.**

11 Each Party or Non-Party that designates information or items for protection under
12 this Order must take care to limit any such designation to specific material that
13 qualifies under the appropriate standards. The Designating Party must designate for
14 protection only those parts of material, documents, items or oral or written
15 communications that qualify so that other portions of the material, documents,
16 items or communications for which protection is not warranted are not swept
17 unjustifiably within the ambit of this Order. Mass, indiscriminate or routinized
18 designations are prohibited. Designations that are shown to be clearly unjustified or
19 that have been made for an improper purpose (e.g., to unnecessarily encumber the
20 case development process or to impose unnecessary expenses and burdens on other
21 parties) may expose the Designating Party to sanctions. If it comes to a Designating
22 Party’s attention that information or items that it designated for protection do not
23 qualify for protection, that Designating Party must promptly notify all other Parties
24 that it is withdrawing the inapplicable designation.

25 **5.2 Manner and Timing of Designations.** Except as otherwise provided in this
26 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
27 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
28 under this Order must be clearly so designated before the material is disclosed or

1 produced. Designation in conformity with this Order requires: (a) for information in
2 documentary form (e.g., paper or electronic documents, but excluding transcripts of
3 depositions or other pretrial or trial proceedings), that the Producing Party affix at a
4 minimum, the legend “CONFIDENTIAL” (hereinafter “CONFIDENTIAL
5 legend”), to each page that contains protected material. If only a portion of the
6 material on a page qualifies for protection, the Producing Party also must clearly
7 identify the protected portion(s) (e.g., by making appropriate markings in the
8 margins). A Party or Non-Party that makes original documents available for
9 inspection need not designate them for protection until after the inspecting Party
10 has indicated which documents it would like copied and produced. During the
11 inspection and before the designation, all of the material made available for
12 inspection shall be deemed “CONFIDENTIAL.” After the inspecting Party has
13 identified the documents it wants copied and produced, the Producing Party must
14 determine which documents, or portions thereof, qualify for protection under this
15 Order. Then, before producing the specified documents, the Producing Party must
16 affix the “CONFIDENTIAL legend” to each page that contains Protected Material.
17 If only a portion of the material on a page qualifies for protection, the Producing
18 Party also must clearly identify the protected portion(s) (e.g., by making
19 appropriate markings in the margins). (b) for testimony given in depositions that the
20 Designating Party identifies the Disclosure or Discovery Material on the record,
21 before the close of the deposition all protected testimony. (c) for information
22 produced in some form other than documentary and for any other tangible items,
23 that the Producing Party affix in a prominent place on the exterior of the container
24 or containers in which the information is stored the legend “CONFIDENTIAL.” If
25 only a portion or portions of the information warrants protection, the Producing
26 Party, to the extent practicable, shall identify the protected portion(s).

27 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
28 failure to designate qualified information or items does not, standing alone, waive

1 the Designating Party's right to secure protection under this Order for such
2 material. Upon timely correction of a designation, the Receiving Party must make
3 reasonable efforts to assure that the material is treated in accordance with the
4 provisions of this Order.

5 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

6 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
7 designation of confidentiality at any time that is consistent with the Court's
8 Scheduling Order.

9 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
10 resolution process under Local Rule 37-1 et seq.

11 6.3 Joint Stipulation. Any challenge submitted to the Court shall be via a
12 joint stipulation pursuant to Local Rule 37-2.

13 6.4 The burden of persuasion in any such challenge proceeding shall be on
14 the Designating Party. Frivolous challenges, and those made for an improper
15 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
16 parties) may expose the Challenging Party to sanctions. Unless the Designating
17 Party has waived or withdrawn the confidentiality designation, all parties shall
18 continue to afford the material in question the level of protection to which it is
19 entitled under the Producing Party's designation until the Court rules on the
20 challenge.

21 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

22 7.1 A Receiving Party may use Protected Material that is disclosed or
23 produced by another Party or by a Non-Party in connection with this Action only
24 for prosecuting, defending or attempting to settle this Action. Such Protected
25 Material may be disclosed only to the categories of persons and under the
26 conditions described in this Order. When the Action has been terminated, a
27 Receiving Party must comply with the provisions of section 13 below (FINAL
28 DISPOSITION). Protected Material must be stored and maintained by a Receiving

1 Party at a location and in a secure manner that ensures that access is limited to the
2 persons authorized under this Order.

3 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
4 otherwise ordered by the court or permitted in writing by the Designating Party, a
5 Receiving Party may disclose any information or item designated
6 “CONFIDENTIAL” only to: (a) the Receiving Party’s Outside Counsel of Record
7 in this Action, as well as employees of said Outside Counsel of Record to whom it
8 is reasonably necessary to disclose the information for this Action; (b) the officers,
9 directors, and employees (including House Counsel) of the Receiving Party to
10 whom disclosure is reasonably necessary for this Action; (c) Experts (as defined in
11 this Order) of the Receiving Party to whom disclosure is reasonably necessary for
12 this Action and who have signed the “Acknowledgment and Agreement to Be
13 Bound” (Exhibit A); (d) the court and its personnel; (e) court reporters and their
14 staff; (f) professional jury or trial consultants, mock jurors, and Professional
15 Vendors to whom disclosure is reasonably necessary for this Action and who have
16 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A); (g) the
17 author or recipient of a document containing the information or a custodian or other
18 person who otherwise possessed or knew the information; (h) during their
19 depositions, witnesses, and attorneys for witnesses, in the Action to whom
20 disclosure is reasonably necessary provided: (1) the deposing party requests that the
21 witness sign the form attached as Exhibit 1 hereto; and (2) they will not be
22 permitted to keep any confidential information unless they sign the
23 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise
24 agreed by the Designating Party or ordered by the court. Pages of transcribed
25 deposition testimony or exhibits to depositions that reveal Protected Material may
26 be separately bound by the court reporter and may not be disclosed to anyone
27 except as permitted under this Stipulated Protective Order; and (i) any mediator or
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1 settlement officer, and their supporting personnel, mutually agreed upon by any of
2 the parties engaged in settlement discussions.

3 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
4 **PRODUCED IN OTHER LITIGATION**

5 If a Party is served with a subpoena or a court order issued in other litigation
6 that compels disclosure of any information or items designated in this Action as
7 “CONFIDENTIAL,” that Party must: (a) promptly notify in writing the
8 Designating Party. Such notification shall include a copy of the subpoena or court
9 order; (b) promptly notify in writing the party who caused the subpoena or order to
10 issue in the other litigation that some or all of the material covered by the subpoena
11 or order is subject to this Protective Order. Such notification shall include a copy of
12 this Stipulated Protective Order; and (c) cooperate with respect to all reasonable
13 procedures sought to be pursued by the Designating Party whose Protected Material
14 may be affected. If the Designating Party timely seeks a protective order, the Party
15 served with the subpoena or court order shall not produce any information
16 designated in this action as “CONFIDENTIAL” before a determination by the court
17 from which the subpoena or order issued, unless the Party has obtained the
18 Designating Party’s permission. The Designating Party shall bear the burden and
19 expense of seeking protection in that court of its confidential material and nothing
20 in these provisions should be construed as authorizing or encouraging a Receiving
21 Party in this Action to disobey a lawful directive from another court.

22 **9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**
23 **PRODUCED IN THIS LITIGATION**

24 (a) The terms of this Order are applicable to information produced by a Non-
25 Party in this Action and designated as “CONFIDENTIAL.” Such information
26 produced by Non-Parties in connection with this litigation is protected by the
27 remedies and relief provided by this Order. Nothing in these provisions should be
28 construed as prohibiting a Non-Party from seeking additional protections.

(b) In the event that a Party is required, by a valid discovery request, to produce a Non-Party's confidential information in its possession, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party's confidential information, then the Party shall: (1) promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party; (2) promptly provide the Non-Party with a copy of the Stipulated Protective Order in this Action, the relevant discovery request(s), and a reasonably specific description of the information requested; and (3) make the information requested available for inspection by the Non-Party, if requested.

(c) If the Non-Party fails to seek a protective order from this court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its Protected Material.

10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

1 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR**
2 **OTHERWISE PROTECTED MATERIAL**

3 When a Producing Party gives notice to Receiving Parties that certain
4 inadvertently produced material is subject to a claim of privilege or other
5 protection, the obligations of the Receiving Parties are those set forth in Federal
6 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
7 whatever procedure may be established in an e-discovery order that provides for
8 production without prior privilege review. Pursuant to Federal Rule of Evidence
9 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure
10 of a communication or information covered by the attorney-client privilege or work
11 product protection, the parties may incorporate their agreement in the stipulated
12 protective order submitted to the court.

13 **12. MISCELLANEOUS**

14 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
15 person to seek its modification by the Court in the future.

16 12.2 Right to Assert Other Objections. By stipulating to the entry of this
17 Protective Order, no Party waives any right it otherwise would have to object to
18 disclosing or producing any information or item on any ground not addressed in
19 this Stipulated Protective Order. Similarly, no Party waives any right to object on
20 any ground to use in evidence of any of the material covered by this Protective
21 Order.

22 12.3 Filing Protected Material. A Party that seeks to file under seal any
23 Protected Material must comply with Local Civil Rule 79-5. Protected Material
24 may only be filed under seal pursuant to a court order authorizing the sealing of the
25 specific Protected Material at issue. If a Party's request to file Protected Material
26 under seal is denied by the court, then the Receiving Party may file the information
27 in the public record unless otherwise instructed by the court.
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1 **13. FINAL DISPOSITION**

2 After the final disposition of this Action, as defined in paragraph 4, within 60
 3 days of a written request by the Designating Party, each Receiving Party must
 4 return all Protected Material to the Producing Party or destroy such material. As
 5 used in this subdivision, “all Protected Material” includes all copies, abstracts,
 6 compilations, summaries, and any other format reproducing or capturing any of the
 7 Protected Material. Whether the Protected Material is returned or destroyed, the
 8 Receiving Party must submit a written certification to the Producing Party (and, if
 9 not the same person or entity, to the Designating Party) by the 60 day deadline that
 10 (1) identifies (by category, where appropriate) all the Protected Material that was
 11 returned or destroyed and (2) affirms that the Receiving Party has not retained any
 12 copies, abstracts, compilations, summaries or any other format reproducing or
 13 capturing any of the Protected Material. Notwithstanding this provision, Counsel
 14 are entitled to retain an archival copy of all pleadings, motion papers, trial,
 15 deposition, and hearing transcripts, legal memoranda, correspondence, deposition
 16 and trial exhibits, expert reports, attorney work product, and consultant and expert
 17 work product, even if such materials contain Protected Material. Any such archival
 18 copies that contain or constitute Protected Material remain subject to this Protective
 19 Order as set forth in Section 4 (DURATION).

20
 21 **14. VIOLATION**

22 Any violation of this Order may be punished by appropriate measures
 23 including, without limitation, contempt proceedings and/or monetary sanctions.

24 IT IS SO ORDERED.

25 DATED: 5/31/2023



ALEXANDER F. MacKINNON
 UNITED STATES MAGISTRATE JUDGE

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of perjury
that I have read in its entirety and understand the Stipulated Protective Order that
was issued by the United States District Court for the Central District of California
on [date] in the case of _____ [insert formal name of the case and the
number and initials assigned to it by the court]. I agree to comply with and to be
bound by all the terms of this Stipulated Protective Order and I understand and
acknowledge that failure to so comply could expose me to sanctions and
punishment in the nature of contempt. I solemnly promise that I will not disclose in
any manner any information or item that is subject to this Stipulated Protective
Order to any person or entity except in strict compliance with the provisions of this
Order. I further agree to submit to the jurisdiction of the United States District
Court for the Central District of California for enforcing the terms of this Stipulated
Protective Order, even if such enforcement proceedings occur after termination of
this action. I hereby appoint _____ [print or type full
name] of _____ [print or type full
address and telephone number] as my California agent for service of process in
connection with this action or any proceedings related to enforcement of this
Stipulated Protective Order. Date: _____
City and State where sworn and signed: _____
Printed name: _____
Signature: _____